Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

BRENT JACKSON [sic]*,

Petitioner,

v.

BRIAN COHEN, MIKE TOLEDO, JAMES ANTHONY, GLENDALE POLICE DEPARTMENT, JOHN DOES 1-10, JANE ROES 1-10, INCLUSIVE,

Respondents.

On Petition For A Writ Of Certiorari To The California Second Appellate District Court Of Appeal

PETITION FOR WRIT OF CERTIORARI

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40pp

QUESTIONS PRESENTED

One:

Whether A State Public Entity Written Policy Can Mandate Police Officers To Conduct General, Exploratory Searches Of Any Arrestees Charged With Infraction Or Misdemeanor Offenses In Violation Of The Fourth Amendment Right To Be Secure From Unreasonable Searches As Made Applicable To The Several States By Operation Of The Fourteenth Amendment?

Two:

Whether A State Trial Judge, In A Title 42, Section 1983 Constitutional Rights Deprivation Lawsuit May Find Objective Probable Cause For Defendant Police Officers To Arrest A Suspect Based Upon Exercise Of His Fifth Amendment Right To Remain Silent?

Three:

Whether An Individual State Judge Can Grant A Nonsuit At Trial On A Federal Monell Constitutional Rights Deprivation Civil Cause Of Action By Merely Denying Jurisdiction To Do So?

TABLE OF CONTENTS

Page

Questions Presented i

Table of Authorities iv

Opinions Below 1

Jurisdiction 1

Statutory And Policy Provisions Involved 2

Statement Of The Case 3

Reasons For Granting The Petition 6

This Court Should Grant Certiorari In Order To Resolve Important Questions Of Federal Law Which Have: (a) Been Decided In Conflict With Relevant Decisions Of This Court And; (b) Not Been, But Should Be, Settled By This Court

Argument One: Whether A State Public Entity Written Policy Can Mandate Police Officers To Conduct General, Exploratory Searches Of Any Arrestees Charged With Infraction Or Misdemeanor Offenses In Violation Of The Fourth Amendment Right To Be Secure From Unreasonable Searches As Made Applicable To The Several States By Operation Of The Fourteenth Amendment? 7

Argument Two: Whether A State Trial Judge, In A Title 42, Section 1983 Constitutional Rights Deprivation Lawsuit May Find Objective Probable Cause For Defendant Police Officers To Arrest A Suspect Based Upon Exercise Of His Fifth Amendment Right To Remain Silent? 15

Argument Three: Whether An Individual State Judge Can Grant A Nonsuit On A Federal Monell Constitutional Rights Deprivation Civil Cause Of Action By Merely Denying Jurisdiction To Do So? 18

TABLE OF CONTENTS – Continued

Page

Conclusion 19

Appendix.....App. 1

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Dickerson v. United States, 147 L.Ed.2d 405 (2000) 10, 14, 15, 17, 19

Higbee v. City of San Diego, 911 F.2d 377 (9th Cir. 1990) 8

Howlett v. Rose, 496 U.S. 356 (1990) 18

Mapp v. Ohio, 367 U.S. 643 (1961) 14

Martinez v. California, 444 U.S. 277 (1980) 18, 19

Miranda v. Arizona, 384 U.S. 436 (1966) 15

Monell v. N.Y.S.S., 436 U.S. 658 (1978) 9

Taglavore v. United States, 291 F.2d 262 (9th Cir. 1961) 13

United States v. Huffhines, 967 F.2d 314 (9th Cir. 1992) 8

United States v. Mills, 472 F.2d 1231 (D.C. Cir. 1972) 12

CONSTITUTION

Fourth Article In Amendment ..... *passim*

Fifth Article In Amendment 10, 15, 17

Eighth Article In Amendment 12

Fourteenth Amendment 14

CALIFORNIA CASES

Carpio v. Superior Court, 19 Cal. App. 3d 790 (1971) 13

People v. Mercurio, 10 Cal. App. 3d 426 (1970) 13

TABLE OF AUTHORITIES – Continued

Page

CALIFORNIA STATUTES

California Penal Code

Section 475 16

Section 853.6 ..... 2, 4, 7, 8, 10, 12

Section 1269b(f) 2, 5, 14

GLENDALE CITY POLICIES

Glendale Police Department Manual Bureau Policy and Procedure

Section 4-7 2

Section 4-10 2

Section 18-1 9

Glendale Police Department Manual

Section 6/010.00 ..... 3, 9

Section 14-5/015 ..... 3, 9

Section 14-5/260 14

California Constitution (1879)

Article I, Section 7 3

Article I, Section 12 ..... 3, 5, 14

Article I, Section 13 ..... 3, 8, 14

Article III, Section 1 3

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the California Second Appellate District Court of Appeal in this matter.

OPINIONS BELOW

The April 24, 2000, opinion issued by Division Seven of the Second Appellate District of the California Court of Appeal, App. 1, *infra*, is unpublished. The May 11, 2000, court of appeal order denying the petition for rehearing was summarily denied. App. 8, *infra*. The California Supreme Court July 12, 2000, order denying the petition for review is unpublished. App. 9, *infra*.

JURISDICTION

A State appellate court has decided an important federal question, potentially involving numerous persons, in a way that conflicts with relevant decisions of this Court, App. 4, *infra*. Additionally, said court has decided two other important questions of federal law that have not, but should be, settled by this Court by way of certiorari. The jurisdiction of this Court is invoked pursuant to Title 28 United States Code (USC), sections 1257a, and 2104. The May 11, 2000, court of appeal order denying the petition for rehearing, App. 8, *infra*, was summarily denied. The California Supreme Court July 12, 2000, order denying the petition for review is unpublished. App. 9, *infra*.

STATE STATUTORY PROVISIONS INVOLVED

California Penal Code, section 853.6(a) mandates that a person arrested for a misdemeanor offense shall be released by the arresting officer upon obtaining arrestee's signature executed on the arresting officer's issued notice to appear citation. App. 11, *infra*.

California Penal Code, section 853.6(i) provides that the arresting officer, after having documented any of nine statutory exceptions on a separate form established by his employing law enforcement agency has provided statutorily justified reason(s) for non-release of a misdemeanor charge arrestee. App. 11-12, *infra*.

California Penal Code, section 1269b(f) provides that a person arrested shall be discharged from custody upon posting bail set for the offense charged App. 12, *infra*.

CITY POLICY PROVISIONS INVOLVED

Glendale Police Department Manual, Bureau Policy and Procedure, section 4-7 provides that a misdemeanor charged arrestee will be released upon written promise to appear unless there exists specific, and valid reasons for not releasing such arrestee. App. 10, *infra*.

Glendale Police Department Manual, Bureau Policy and Procedure, section 4-10 provides that any person arrested by a police officer for a misdemeanor offense charge, who is not released with a promise to appear citation, may be held in custody after the arresting officer has documented the statutory exeption(s)/reason(s) for

non-release on a Form #670, as well as in the body of the arrest/incident report. App. 10, *infra*.

Glendale Police Department Manual, section(s) 6/010.00, and 14-5/015 both provide that any and all persons arrested and taken into custody shall be thoroughly searched by the arresting officer prior to transportation of that arrested person. And that no further search of such arrested person shall be made if the arrestee indicates he wishes to post bail App. 10-11, *infra*.

CONSTITUTIONAL RIGHTS INVOLVED

California Constitution (1879),

Article I, Section 7 provides: A person may not be deprived of liberty or property without due process of law, or denied equal protection of the laws. Article I, Section 12 provides: A person shall be released on bail by sufficient sureties. App. 12, *infra*.

Article I, Section 13 provides: The right of the people to be secure in their person, papers and effects against unreasonable seizures and searches may not be violated.

Article III, Section 1 provides: The United States Constitution is the supreme law of the land. App. 12, *infra*.

STATEMENT OF THE CASE

This matter concerns a state trial judge's erroneous rulings regarding state and federal law, and erroneous speculation based rulings pertaining to Title 42 USC,

section 1983, causes of action for unconstitutional Monell written policy police conduct, unconstitutional false arrest and imprisonment, and unreasonable search and seizure as regards petitioner, and other similarly situated persons.

On December 10, 1994, petitioner was arrested for a California Penal Code, section 273a(b) misdemeanor offense charge in Glendale, California. App. 1, *infra*. The said charge was subsequently dismissed. App. 2, *infra*.

Petitioner was not released upon a notice to appear as mandated by California Penal Code, section 853.6(a). App. 5, *infra*. Petitioner was unreasonably searched by the arresting officer who did not document any statutory reason for non-release of petitioner. App. 15, *infra*. Petitioner was deprived of his constitutional right to equal protection of the law. Petitioner demanded three separate times to be processed for a cash bailout before and during the unreasonable booking search, whereas the arresting officer refused to stop the said search, or process petitioner for a cash bailout. App. 2, *infra*. Petitioner was subsequently arrested on a California Penal Code, section 475 charge of possession of forged bank notes/counterfeit currency which was never filed for prosecution. App. 2, *infra*.

Petitioner timely filed a Title 42 USC, section 1983 Monell policy constitutional rights deprivation civil action with subsidiary causes of action pleading unreasonable search and seizure, and false arrest and imprisonment lawsuit against defendant police officers, and the Glendale Police Department pursuant to the concurrent jurisdiction of a California superior court. App. 3, *infra*.

The trial judge granted nonsuit on the Monell action over plaintiff's objections Reporter's Transcript (RT) 106:17-18. App. 3, *infra*, and subsequently rendered a verdict for defendants on all remaining causes of action. App. 3, *infra*. Petitioner filed a timely notice of appeal from the judgment. App. 3, *infra*.

Respondent court affirmed the said judgment in its opinion filed on April 24, 2000. App. 1, *infra*. The opinion alleged that the Monell cause of action was properly nonsuited, in part, because appellant's right to be released without search on the misdemeanor charge was only potentially a statutory right, and not a constitutional right to release. And also, in part, that petitioner's right to be released without a search on bail was repealed by statute in 1985, while disregarding the mandatory bail release provisions of California Penal Code, section 1269b(f), and California Constitution (1879), Article I, Section 12. App. 5, *infra*, and App. 12, *infra*.

The number one question presented herein was raised at the trial level by the complaint pleadings. App. 3, *infra*. The said question was reviewed, and erroneously ruled upon as being a potential statutory right not a constitutional right to be released without a search at the appellate level. App. 5, *infra*, and App. 12, *infra*.

The number two question presented herein arose at the end of trial during the verdict RT 208:4-8. The said question presented was premised in Appellant's Opening Brief (AOB) 22:16-20, and in Appellant's Reply Brief (ARB) 6:24-28, and not directly ruled upon, at the appellate level in the opinion. App. 6, and App. 15, *infra*, objection to the trial judge's on record ruling: "(w)ell,

there may be a forum at which to challenge that policy, if it exists, but this isn't it." App. 14, *infra*. The said question presented was a subsidiary part of appellant's appeal premise that the trial judge erred in granting nonsuit of his Monell cause of action. App. 4, *infra*. AOB 7:2-7, and ARB 5:1-7. The said premise was not directly ruled upon at the appellate level. App. 6, *infra*. Appellate court ruled that credibility was a matter for the trial court to decide, and failed and refused to address appellant's premise regarding his constitutional right to remain silent during a police custody interrogation which was utilized by the trial court to purportedly justify the arresting officers' subjective suspicion/probable cause determination that the seized currency was counterfeit based upon appellant's silence during the police custody interrogation. App. 14, *infra*. On May 11, 2000, the petition for rehearing was denied. App. 8, *infra*. On July 12, 2000, the petition for review was denied by the California Supreme Court. App. 9, *infra*. This petition for certiorari followed.

REASONS FOR GRANTING THE PETITION

1. The primary federal constitutional question raised by this petition is substantial in that the Monell City Police Department written policy has deprived petitioner, as well as numerous other persons similarly situated who have collectively been arrested for infraction and misdemeanor charges, in addition to persons detained as suspects of uncharged crimes, of his/their constitutional right to be secure from unreasonable search and seizure. The appellate court opinion conflicts with relevant decisions of this Court. App. 14-15, *infra*.

2. A secondary federal constitutional question of first impression is raised herein regarding a state judge's utilization of petitioner's maintenance of his right to remain silent during a police custody interrogation as a basis for a civil lawsuit probable cause ruling in favor of police officer defendants to arrest petitioner for an alleged "crime" that was never filed for prosecution. App. 14-15, *infra*.

3. A tertiary reason is provided by a ripe jurisdictional issue in the matter at bench because this Court has left open the question as to whether an individual judge can refuse to entertain a Title 42 USC, section 1983 action in a state court forum as noted in *Martinez v. California*, App. 14, *infra*.

ARGUMENT ONE

Whether A State Public Entity Written Policy Can Mandate Police Officers To Conduct General, Exploratory Searches Of Any Arrestees Charged With Infraction Or Misdemeanor Offenses In Violation Of The Fourth Amendment Right To Be Secure From Unreasonable Searches As Made Applicable To The Several States By Operation Of The Fourteenth Amendment?

California Penal Code, section 853.6, App. 11, *infra*, being preemptive over its political subdivision city written policies, specifically provides for police officer notice to appear citation and release of arrestees charged with misdemeanor offenses without any search, booking procedure, or incarceration unless certain specifically enumerated statutory exemption(s) exist which must be

separately documented by the arresting officer on a special purpose law enforcement agency form before he may search and incarcerate the misdemeanor arrestee. App. 11-12, *infra*, and App. 10, *infra*.

The California Legislature has provided the aforesaid state law preemptory statutory release from custody mechanism for ensuring that arrestees charged with misdemeanor offenses by police are to be secure from unreasonable searches and seizures in conformance with the Fourth Amendment of the United States Constitution, and California Constitution (1879), Article I, Section 13. App. 12, *infra*, and App. 11, *infra*.

The Ninth Circuit Court of Appeals, in *Higbee v. City of San Diego* (9th Cir. 1990), 911 F2d 377, 379, ruled: "California Penal Code, section 853.6 requires that a police officer making an arrest for a misdemeanor issue a field release citation which permits the arrestee to avoid the usual booking process."

The Ninth Circuit Court of Appeals, in *United States v. Huffhines* (9th Cir. 1992), 967 F2d 314, 317-318, ruled:

> Officer Miller failed to follow ordinary procedures by not releasing Huffhines pursuant to California Penal Code, section 853.6 prior to the search. Whether an arrest is a mere pretext to search turns upon the motivation or primary purpose of the arresting officers. Police officers may not engage in a scheme to evade the requirements of the Fourth Amendment by using an arrest as a pretextual reason to search a suspect.

In an unlawful contravention of the aforesaid preemptive state statute, political subdivision corporation,

City of Glendale Police Department has maintained and implemented a written type of *Monell v. N.Y.S.S.* (1978), 436 U.S. 658 city policy which purports to legitimize, under color of local authority, the general, exploratory searches of any selected arrestees, including petitioner, arrested for any infraction or misdemeanor charge. Said Monell policy abridges large numbers of persons' Fourth Amendment rights to be secure from unreasonable searches and seizures.

The said written Monell City Police Department policy, which constitutes the primary, unreasonable search, is found, in part, in Glendale Police Department (GPD) Manual, Part 5, Chapter 14, section(s) 6/010.00, and 14-5/015, same providing: "All persons arrested and taken into physical custody shall be thoroughly searched by the arresting officer prior to and in anticipation of transporting him." App. 10-11, *infra*.

Shortly after the said primary search of an infraction or misdemeanor arrestee, follows a secondary unreasonable search as authorized by another Monell written city police department policy, same found in GPD Manual Bureau Policy and Procedure, section 18-1, same providing: "The arresting officer is responsible for conducting a complete search of the suspect prior to booking." App. 10, *infra*.

The aforesaid written Monell City policy manifestly and unlawfully contravenes the said preemptive state statute which was designed to ensure minor offense(s) infraction and misdemeanor arrestees are secure from

unreasonable searches in violation of the Fourth Amendment by overzealous police officers unlawfully complying with the said Monell City Police Department written policy. App. 10-11, *infra.*

Petitioner, was arrested for a misdemeanor offense by defendant police officer who did not document any reason for imprisoning petitioner as mandated by controlling state Penal Code, Section 853.6 but, rather, unreasonably searched petitioner without lawful probable cause. App. 10 and 15, *infra.*

Petitioner has been grossly deprived of his Fifth Amendment due process of law rights under the federal constitution because defendant police officer failed to issue a notice to appear and release petitioner as mandated by said preemptive state statute without conducting the subsequent unreasonable search. App. 11-12, *infra.*

Defendant police officer's misplaced reliance on the Monell City Police Department written policy purporting to authorize general, exploratory searches of any selected infraction and misdemeanor arrestee manifestly violates the Fourth Amendment prohibition of unreasonable searches conducted against numerous arrestees annually by the defendant police department. App. 11, *infra.*

This Court in *Dickerson v. United States* (2000), 147 L. Ed. 405, 416, 530 U.S. ___, 120 S. Ct. ___, ruled: "Federal courts may intervene to correct wrongs of constitutional dimension."

As a secondary issue, the said Monell City Police Department written policy purports to authorize police agency officers to unreasonably search any infraction or

misdemeanor arrestee they selectively choose to search regardless of the fact that such arrestee has sufficient funds in his immediate possession to post bail prior to a pre-transportation search, or a subsequent booking search of his person. App. 11, *infra.*

The said Monell city police department policy primary pre-transportation search is blatantly unreasonable because, by its provisions, the arrestee is physically searched prior to any police transportation which renders it impossible for the arrestee to post bail with an agency personnel/cashier who has been delegated authority to receive cash bail until after the Monell city police department policy pre-transportation search has been conducted by the arresting officer. App. 11, *infra.*

The said primary Monell city police department written policy pre-transportation search fails to achieve the reasonable standard mandated by the Fourth Amendment. The secondary stage pre-booking search policy also violates the Fourth Amendment because the arrestee is unable to physically access an agency personnel/cashier who has been delegated authority to accept cash bail prior to the Monell city police department written policy secondary pre-booking search. App. 10-11, *infra.*

Another class of persons who also suffer said Fourth Amendment search violations are persons who are not arrested for any specific charge but, rather, are taken into custody as suspects of some possible unknown but suspected "crime." Such uncharged suspects are also subjected to the aforesaid pre-transportation, exploratory search of their person prior to being transported to a police precinct station for detective interrogation. App.

10, *infra*. The said Monell city police department written policy has annually deprived the Fourth Amendment rights of numerous similarly situated arrestees/suspects to be secure from unreasonable searches.

Petitioner, perceiving that he was not going to be released under the authority and provisions of Penal Code, section 853.6, immediately and specifically demanded to be processed out on a cash bail which he possessed on his person at the time of his initial arrest. Defendant police officer's refusal to process petitioner out of custody on a cash bail prior to conducting an exploratory search of petitioner's person by alleged authority of the Monell city police department written policy manifestly violated petitioner's Eighth Amendment right to post cash bail on the initial misdemeanor charge. The appeal record documents that "three times during the booking, appellant demanded to be processed for immediate bail, stating that he had sufficient funds for bail. Toledo refused to process appellant for cash bailout." App. 2, *infra*. *Cf.* App. 11, *infra*.

The District of Columbia Circuit Court in *United States v. Mills*, (D.C. Cir. 1972) 472 F.2d 1231, 1234, ruled:

> Having been arrested for a petty offense, Mills should have been informed of his opportunity, prescribed for that offense, to post $50 collateral and leave the precinct station. Instead, the police officer who conducted the booking proceeded forthwith to require Mills to empty his pockets. We think that was an unreasonable search.

The California Second Appellate District Court of Appeals long ago in *Carpio v. Superior Court*, (1971) 19 Cal. App. 3d 790, 793, ruled:

> The arrestee was entitled to bail, he was subjected to a search of his person without being given the opportunity to post bail. The "booking" involved merely taking entries on the jail blotter. Unless, and until, it was determined that petitioner was about to be placed in jail, there was no necessity for the search which was made. The search was unlawful.

The Second District Court of Appeals long ago in *People v. Mercurio*, (1970) 10 Cal. App. 3d 426, 232 ruled: "Although the arrest of appellant was lawful, the failure of the officer to take him before a person accepting bail in accordance with schedule, deprived the subsequent jailhouse search of validity."

The Ninth Circuit Court of Appeal in *Taglavore v. United States*, (9th Cir. 1961) 291 F.2d 262, 266, ruled:

> Were the use of a misdemeanor arrest as a pretext for searching people suspected of felonies to be permitted, a mockery could be made of the Fourth Amendment and its guarantees. The violation of a constitutional right by a subterfuge cannot be justified. The courts must be vigilant to detect and prevent such a misuse of legal processes.

The record clearly establishes that petitioner was searched twice during the arrest and booking process. App. 13-14, *infra*. The GPD Manual provides for three separate searches of infraction and misdemeanor

arrestees before and during the booking process. App. 11-12, *infra*.

The GPD Manual, at section 14-5/015, further provides: "After the pre-transportation search no further search of persons shall be made if the prisoner indicates he wishes to post bail." App. 11, *infra*.

California Penal Code, section 1269b(f) and California Constitution (1879), Article I, Section 12 provide that an arrestee is entitled to post bail on a criminal charge. App. 12, *infra*.

California Constitution (1879), Article I, Section 13 provides that arrestees have a right to be secure in their person against unreasonable searches. App. 12, *infra*.

This Court in *Mapp v. Ohio*, (1961) 367 U.S. 643 ruled the Fourth Amendment probable cause requirement, and security against unreasonable searches, is made applicable to the several states by the Fourteenth Amendment provision that no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States.

This Court in *Dickerson v. United States, supra*, ruled that "Federal courts may intervene to correct wrongs of constitutional dimension", and petitioner contends that this Court should do so in the matter at bench by granting certiorari.

ARGUMENT TWO

Whether A State Trial Judge, In A Title 42, Section 1983 Constitutional Rights Deprivation Lawsuit May Find Objective Probable Cause For Defendant Police Officers To Arrest A Suspect Based Upon Exercise Of His Fifth Amendment Right To Remain Silent?

The constitutional significance of the Fifth Amendment right of a suspect to remain silent during a police custody interrogation has been recognized by this Court in its decision in *Miranda v. Arizona*, (1966) 384 U.S 436, 468-470, 16 L. Ed. 2d 694, 720-727, 86 S. Ct. 1602, same ruling:

> It is impermissible to penalize an individual for exercising his Fifth Amendment privilege when he is under police custodial interrogation. The Fifth Amendment privilege against self-incrimination cannot be abridged. If an individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries. The fact that he stood mute may not be used at trial.

The aforesaid Miranda doctrine has recently been reaffirmed in this Court's decision in *Dickerson v. United States*, (2000) 147 L. Ed. 2d 405, 414, 530 U.S. ___, 120 S. Ct. ___, same ruling that "a suspect has the right to remain silent. Federal courts may intervene to correct wrongs of constitutional dimension", *supra*, at page 416. This Court also recognized in *Dickerson, supra*, at page 418 that "a suspect may bring a federal cause of action under

the Due Process Clause for police misconduct during a custodial interrogation."

Hence, for the foregoing reasons, it is manifest that prosecution evidence may not be introduced in a criminal case to establish that the accused remained silent during a custodial police interrogation.

It is equally clear that the Fourth Amendment mandates that objective probable cause must be demonstrably shown by the testimony of the arresting officer in order to justify an arrest for a criminal charge.

Turning to the matter at bench, defendant police officer Brian Cohen testified that he based his subjective probable cause to arrest upon petitioner's maintenance of silence. App. 14-15, *infra*.

During the trial verdict the judge, on considering the necessary element of criminal knowledge, ruled that petitioner's maintenance of silence constituted probable cause for his arrest on the Penal Code, section 475 charge which was never filed for prosecution. App. 15, *infra*.

Thus, the record clearly discloses that said defendant police officer unlawfully considered petitioner's maintenance of silence during the custodial interrogation as subjective "evidence" of petitioner's criminal knowledge of the forged status of the "counterfeit" currency. The record also discloses that the trial judge unlawfully ruled, on the necessary element of criminal knowledge of the status of the "counterfeit" currency, that such knowledge was evidenced by petitioner's maintenance of silence during the police custodial interrogation.

Hence, an important question of federal law arises, as an issue of first impression, as to whether a state trial judge, hearing evidence, in a Title 42, section 1983 civil lawsuit, can lawfully make a determination of an objective Fourth Amendment probable cause ruling in favor of police officer defendants to justify an arrest, based upon arrestee's maintenance of silence during a former police custodial interrogation, in a civil lawsuit cause of action for false arrest and imprisonment? App. 14-15, *infra*. The record documents that the alleged violation was never filed for prosecution. App. 2, *infra*.

The Miranda doctrine provides that "it is impermissible to penalize an individual for exercising his Fifth Amendment privilege", and "the fact that he stood mute may not be used at trial" (in a criminal case). Hence, the Fourth Amendment orbiter question presented herein is whether the fact that the arrestee stood mute during a custodial police interrogation can be received into evidence for purposes of making a Fourth Amendment objective probable cause ruling in favor of defendant police officers in a civil lawsuit cause of action for false arrest?

Petitioner contends that said civil lawsuit issue of probable cause to arrest ruling does not lawfully comply with the Fourth Amendment requirement that an arrestee can only be lawfully arrested upon objective probable cause basis but, to the contrary, the said ruling impermissibly penalized petitioner for having exercised his constitutional right to remain silent during a previous custodial police interrogation in a former criminal charge which was never filed for prosecution. As ruled in the *Dickerson* case, *supra*, the "federal courts may intervene to

correct wrongs of constitutional dimension." The matter at bench constitutes a substantial federal question which should be reviewed by this Court on certiorari.

ARGUMENT THREE

Whether An Individual State Judge Can Grant A Nonsuit On A Federal Monell Constitutional Rights Deprivation Civil Cause Of Action By Merely Denying Jurisdiction To Do So?

The record discloses that petitioner at trial objected to, and appealed from, the judgment granting nonsuit as to his Monell written city police department policy cause of action. App. 1 and 14, *infra*. The state trial judge simply denied jurisdiction to hear the said cause of action by stating "well, there may be a forum at which to challenge that policy, if it exists, but this isn't it." App. 14, *infra*. The appellate court affirmed the judgment. App. 1, *infra*.

While it is clear that courts of the several states generally may entertain a Title 42 USC, section 1983 civil lawsuit *Howlett v. Rose*, (1990), 496 U.S. 356, 358, 110 L. Ed. 2d 332, 342, 110 S. Ct. 2430, it is also true that this Court in *Martinez v. California*, (1980) 444 U.S. 277, 283, fn. 7, 62 L. Ed. 2d 481, 488, 100 S. Ct. 553 noted "we have never considered the question whether a state must entertain a claim under section 1983."

Hence, the instant question arises herein as to whether an individual judge can refuse to accept jurisdiction of a Title 42 USC, section 1983 Monell policy cause of action while acting under color of state authority in a state court system that generally hears section 1983

actions? The instant question presented is ripe for review by certiorari because this Court has earlier left open the question as to whether an individual judge must grant a jurisdictional forum, and entertain a claim under section 1983 in the *Martinez v. California* case notation, *supra*.

This Court ruled in *Dickerson, supra*, that the "federal courts may intervene to correct wrongs of constitutional dimension", and petitioner contends that this Court should grant certiorari to consider future briefs on the merits premising the important federal questions presented herein for review.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that this Court grant his petition for writ of certiorari.

Subsequently, petitioner will motion to substitute in his pro hac vice counsel of record to prepare briefs on the merits, and to orally argue this certiorari proceeding to its conclusion.

Respectfully submitted,

Brent Wrenshall, Jackson
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Dated: November 24, 2000

CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION SEVEN

Brent Jackson, Appellant, v. BRIAN COHEN, et al., Respondents.	)	No. B 130614 (Filed April 24, 2000)

Appeal from a judgment of the Superior Court of Los Angeles County. Florence-Marie Cooper, Judge. Affirmed.

Plaintiff Brent Jackson appeals from a judgment in favor of defendants raising several alleged errors. We affirm.

FACTUAL AND PROCEDURAL SYNOPSIS

I. Factual Background

On December 10, 1994, at approximately 10:20 p.m., appellant arrived at the Glendale Police Department to secure custody of his two children. At about 10:25 p.m., Officer Mike Toledo arrested appellant for violation of Penal Code section 273a, subdivision(b) – misdemeanor child neglect. Appellant had left his two children (ages seven and eight) unattended at Sears at night for approximately two hours past store closing. The police had picked the children up after receiving a call from Sears. Appellant thought the store closed at 9 p.m.; it closed at 8 p.m. Appellant had left the store to do some Christmas shopping and returned after 9 p.m.

Upon appellant's arrest, an inventory search was conducted. Officer Mike Toledo extracted appellant's wallet containing $437 from appellant's pants and a brown manilla envelope containing approximately $10,630 from appellant's vest pocket (for a total of $11,067). Some of the bills had a stamp "abolish federal reserve bankers" on them. Officer Brian Cohen came by while Toledo was counting the money. Cohen stated he suspected the currency was counterfeit. Cohen left and telephoned federal Secret Service to inquire whether the bills could be counterfeit. Cohen returned and said the Secret Service had stated the currency might be counterfeit.

Consequently, in addition to being booked for child endangerment, appellant was booked for violation of section 475 – possession of forged bank notes/counterfeit currency, a felony. The currency was ultimately determined to be genuine, and no charges were filed with respect to the currency. The child neglect charge was dismissed in due course upon appellant's completion of a diversion program.

Three times during booking, appellant demanded to be processed for immediate bail stating he had sufficient funds for bail. Toledo refused to process appellant for cash bailout.

After his release, appellant demanded return of the money to no avail. In January 1995, the city forwarded $8,471.98 to the Franchise Tax Board pursuant to a January 3rd voluntary withhold order. The balance of $2,595 was returned to appellant.

II. Procedural History

On January 3, 1996, appellant filed this action for false arrest and false imprisonment, unlawful search and seizure, conversion, and assault and battery against two individual police officers. Subsequently, the complaint was amended to add a cause of action for violation of civil rights. The case was tried to the court. The court granted nonsuit on the civil rights cause of action. After hearing the evidence, the court rendered a verdict in favor of respondents on the remaining causes of action. Appellant filed a timely notice of appeal from the judgment.

DISCUSSION

We review the court's findings under the substantial evidence rule. (See Jordan v. City of Santa Barbara (1996) 46 Cal. App. 4th 1245, 1254-1255.) Questions of law are reviewed independently. (Cf. Stratton v. First Nat. Life Ins. Co. (1989) 210 Cal. App. 3d 1071, 1083).

I. Nonsuit on the Monell cause of action was proper.

Appellant was not arrested in the field; he was arrested for misdemeanor child endangerment when he arrived at the Glendale Police Department[2] to pick up his

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[2] When a prisoner is booked at a police station, ordinarily he may be searched in order to prevent weapons and contraband from being brought into the jail and to remove personal effect. (People v. Mercurio (1970) 10 Cal. App. 3d 426, 430.

children whom he had left unsupervised at a Sears store. After a brief discussion upon appellant's arrival, he was arrested, taken into the booking area, and searched. During the search, the envelope with the currency was found.

Appellant contends that the court erred in granting nonsuit on his Monell cause of action. In Monell v. New York City Dept. of Social Services (1978) 436 U.S. 658, 690-694, the court concluded that a claim could be asserted against a governmental entity if it maintained a written or unwritten policy, practice, custom or procedure which was the driving force behind the deprivation of a Constitutional right. Appellant argues his constitutional rights were violated because a misdemeanor arrestee has a mandatory right to be released without being searched pursuant to section 853.6[3] Appellant cites no cases interpreting section 853.5 as granting such a constitutional right.

In Higbee v. City of San Diego (9th Cir. 1990) 911 F2d 377, 379, the court noted "an arrested person is taken to a police facility where he or she is booked and either posts a statutory bond or appears before a judicial officer for bail to be set. . . . (Section 853.6, subdivision(a)) requires that a police officer making an arrest for a misdemeanor issue a field release citation which permits the arrestee to avoid the usual booking process." The Higbee court reasoned: "However, plaintiffs did not have a constitutional right to immediate liberty once they were subjected to a lawful arrest. The state is constitutionally permitted to

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[3] Section 853.6 does not grant an absolute right to be released with notice; subdivision (i) lists exceptions to immediate release.

detain all misdemeanor arrestees for the usual post-arrest procedures. California has excepted some misdemeants (sic) from this procedure – that is California's right. It has also provided that some misdemeanants will be subject to the custodial post-arrest procedures – that too is California's right." (Ibid.) In concluding there was no constitutional right to be released in the field without being booked, the court observed that being taken to jail to be booked and processed in the customary manner fully complied with both the Fourth and Fourteenth Amendments. (Id., at p. 380.)

Appellant also argues pursuant to section 1268a, he had a right to post bail to avoid a search. That section was repealed in 1985. (See Deering's Ann. Pen. Code, section 1268a (2000 pocket supp.) p. 76.)

There is no constitutional right to be released without a search; only a statutory right to be released in some instances.[4] Accordingly, there was no basis for a Monell cause of action.

II. The verdict on the remaining causes of action was proper.

Appellant contends that there was not probable cause to arrest him on either of the two charges. The court's

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[4] Appellant was not issued a notice to appear. Appellant claims the arresting officer did not sign a Glendale form, which conforms with section 853.6, giving the reasons for nonrelease. That claim is not supported by the record. Even if it was, appellant does not claim he did not meet one of the exceptions to immediate release.

finding there was probable cause on both charges was supported by substantial evidence. As noted by the court, it was reasonable to infer the children had been endangered because it was after 10 p.m. when appellant got to the station to inquire about his children whom he had left unsupervised in a department store. The court found probable cause to arrest on the possession of counterfeit currency based on the amount of money and the stamps on the bills as well as the testimony of Officer Cohen, whom the court found to be very believable, that he had called the secret service and been told the bills might be counterfeit.

Appellant suggests there was no probable cause as he told the officers his children were not in danger and the bills were not counterfeit. Appellant also insists Cohen was lying. Appellant's denial of the charges does not negate probable cause, and credibility was a matter for the trial judge to decide. Accordingly, judgment on the cause of action for false arrest and imprisonment was proper. Appellant does not challenge the judgment on the assault and battery cause of action, which was based on his being handcuffed.

At the time the money was taken, the police reasonably believed it to be counterfeit. Appellant seems to contend the judgment on the conversion cause of action was improper as the Police Department turned the money over to the Franchise Tax Board pursuant to a voluntary order rather than a mandatory order. Conversion is the wrongful exercise of dominion over the personal property of another. (5 Witkin, Summary of Cal. Law (9th ed 1988) Torts, section 610, pp. 707-708.) Appellant cites no authority that such an act constitutes wrongful exercise of

dominion. (See MST Farms v. C.G. 1464 (1988) 204 Cal. App. 3d 304, 306.)

Appellant's contention he could not be charged with a violation of section 273a, subdivision(b) because the original Penal Code was not properly enacted in 1872 is without merit.

DISPOSITION

The judgment is affirmed. Respondents to recover costs on appeal.

WOODS, J.

We concur:

LILLIE, P.J. JOHNSON, J.

CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION SEVEN

Brent Jackson, Appellant, v. BRIAN COHEN, et al., Respondents.	)	No. B 130614 (filed May 11, 2000)

THE COURT:

Appellant's petition for rehearing denied.

IN THE SUPREME COURT OF CALIFORNIA

Brent Jackson,
Appellant,
v
BRIAN COHEN et al.,
Respondents.

No. S 088548
(Filed July 12, 2000)
Petition for review
DENIED.

GEORGE, C.J.

GLENDALE CITY POLICY PROVISIONS

Glendale Police Department Manual, Bureau Policy and Procedure, section 4 - 7 : To comply with the provisions of Section 853.6 P.C., persons arrested for misdemeanor offenses will be released upon written notice to appear unless there are specific, valid reasons for not releasing such persons prior to court appearances.

Glendale Police Department Manual, Bureau Policy and Procedure, section 4 - 10: Whenever any person is arrested by a peace officer for a misdemeanor and is not released with a written promise to appear in court, pursuant to 853.6 of the Penal Code, the arresting officer shall indicate on the Reason for Non-Release of Misdemeanor Prisoner Form (Form #670) the reason for such non-release. In addition to the completion of this form, the arresting officer shall include in the body of the Incident Report a detailed account of the reason(s) why the person was not released.

Glendale Police Department Manual, Bureau Policy and Procedure, section 18 - 1: Searches of prisoners upon entering the jail shall be conducted by the arresting or transporting officer who is responsible for conducting a complete search of the suspect prior to booking. Arrestees shall be searched by the arresting officer at the booking counter and shall remain cuffed during the search. A secondary search by custody personnel is required before the prisoner is uncuffed and housed.

Glendale Police Department Manual, section 6/010.00: All persons arrested and taken into physical custody shall be thoroughly searched by the arresting officer, prior to and in anticipation of transporting him. If evidence of

other crime is found upon the arrested person during the pre-transportation search, the officer may elect to book him on charges other than that for which he was originally arrested.

Glendale Police Department Manual, section 14-5/015: All persons arrested and taken into physical custody shall be thoroughly searched by the arresting officer, prior to and in anticipation of transporting him. If evidence of other crime is found upon the arrested person during the pre-transportation search, the officer may elect to book him on charges other than that for which he was originally arrested. No further search of persons arrested shall be made at the jail if the prisoner indicates he wishes to post bail.

Glendale Police Department Manual, section 14-5/260: Jailers shall accept cash bail on all misdemeanors in accordance with the bail schedule adopted in obedience to Section 1269(b) Penal Code

CALIFORNIA PENAL CODE

Penal Code, section 853.6(a) In any case in which a person is arrested for an offense declared to be a misdemeanor, that person shall be released according to the procedures set forth by this chapter.

Penal Code, section 853.6(i) Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer shall indicate, on a form to be established by his employing law

enforcement agency, which of the following was a reason for nonrelease:

> Penal Code, section 1269b(f) Upon posting bail the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

CALIFORNIA CONSTITUTION

Article I, Section 7: A person may not be deprived of liberty or property without due process of law, or denied equal protection of the laws.

Article I, Section 12: A person shall be released on bail by sufficient sureties. Article I, Section 13: The right of the people to be secure in their person, papers and effects against unreasonable seizures and searches may not be violated. Article III, Section 1: The United States Constitution is the supreme law of the land.

APPEAL RECORD

CALIFORNIA SUPERIOR COURT
FOR LOS ANGELES COUNTY

Brent Jackson, Plaintiff, v BRIAN COHEN, et al., Defendants.	No. BC 141776 FLORENCE-MARIE COOPER, JUDGE March 8-9, 1999 REPORTERS TRANSCRIPT

Page 57

Q. Okay. When you were there, or when he was gone, what were you doing then?

A. They were conducting more searches. They took off my socks and turned my socks inside out.

Q. Anything else?

A. It was a full blown search. They take off your clothing, search everything, turn all the pockets inside out.

Page 60

Q. All right. Thank you. Now, when you were jailed, Mr. Jackson, were you searched again?

A. Could you explain what you mean by "again".

Q. Yes. After you were booked, were you searched again?

A. Yes, there are two booking – correction. There is an arresting officer search and then there is an in-house staff search.

Q. All right. Where did that take place?

A. Same location.

Page 106

And I think it's a shame because the officer's policy is going to say: We search everybody every time we arrest them.

THE COURT: Well, there may be a forum at which to challenge that policy, if it exists, but this isn't it.

Page 133

Q. When you talked about Mr. Jackson's not answering questions in your presence, what was he doing?

A. He was just staring straight ahead at the booking cage as – to not want to answer our questions. Just like a stern face, straight ahead, ignoring us.

Q. Did that in any way cause you, as an experienced police officer, to have any feelings with regard to suspicion or heightening of suspicion?

A. It did.

Q. What was it about that that heightened your suspicion?

Page 134

A. Well, it just seemed that if he would have answered, you know, where the monies came from, you know, are they counterfeit, giving us some type of basis why he had that type of money on him, it would have helped us out a little bit more in determining what was going on.

Page 165

Q. Okay. Now, given what you've told us, Officer Toledo, you told us there was no supplement made to this report. You already said that, correct?

A. I don't believe there is any other supplement.

Page 207

What you need for the offense of possession of these forged documents is not only possession of them but knowledge of the fact that they are forged; and I think that goes directly to Officer Cohen's testimony that Mr. Jackson refused to answer his questions about it.

Page 208

But to become stonily silent when you're being asked: What do you know about these bills in your possession, I think adds to the suspicion that there was knowing possession of forged documents which certainly gives probable cause to arrest for that crime.